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Speaker Registration/Testimony

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Name(*)	Tabatha Chow
Phone (*)	8082259378
Email (*)	tabatha@uber.com
Meeting Date (*)	2016-05-18
Council/PH Committee (*)	Budget
Agenda Item (*)	Bill 36
Your position on the matter (*)	Oppose
Representing (*)	Organization
Organization	Uber Technologies Inc
Do you wish to speak at the hearing? (*)	Yes
Written Testimony	
Testimony Attachment	20160517121557_Tabatha Chow - Bill 36 51816.pdf
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UBER

TESTIMONY OF TABATHA CHOW ON BEHALF OF UBER TECHNOLOGIES IN OPPOSITION OF BILL 36, PROPOSED CD1

May 18, 2016

Thank you Chair Kobayashi, Vice Chair Manahan, and committee members for allowing to provide testimony on Bill 36. I am offering testimony in opposition of Bill 36 in its current form, but look forward to collaborating further on this matter.

Our recommendation for the Council is to adopt a framework similar to legislation passed in municipalities across the country, where Uber operates alongside other transportation options. I have attached a proposed framework for TNCs in Honolulu County at the end of this testimony. This framework is tailored for Honolulu County, and is based on what has worked in other municipalities.

The attached proposed framework could sit as a subsection of Chapter 12, or wherever the Council sees fit. In this framework, the city would permit the TNC, rather than each individual TNC driver. The TNC would perform the TNC driver screening process, and would be required to adhere to an appropriate screening process. This would avoid a duplicative process between the city and TNC company and would put significantly less strain on city resources. This is the approach taken across the country, including in municipalities where the city issues individual taxi certificates to taxi drivers.

For a TNC driver to gain access to the Uber app, they have to first pass through the Uber screening process. This process includes a seven-year criminal record check, a Motor Vehicle Record check, and a check against the National Sex Offender Registry, court records, and databases that screen for potential terrorist activities. Additionally, the TNC collects all vehicle documents, including driver's license, registration, insurance, and the HI state safety inspection.

The purpose of pre-screening drivers is to identify offenses and other information that may disqualify potential drivers from using Uber. This process has been effective at screening out drivers who do not qualify, including many certified Honolulu taxi drivers that do not meet Uber's standards. It's important to understand Uber's screening process, because the issue with this bill is that it would require the city to duplicate these same screening efforts, but with city resources. The Uber screening process typically takes less than one week to complete. The city's process might take months and would certainly require extensive resources. We ask the city to consider requiring TNCs to adhere to certain standards of driver screening, rather than have the city take on the burden of attempting to screen and certify all TNC drivers with limited city resources.

The primary reason it does not make sense for the city to issue individual driver certificates to TNC drivers is that fact that more than 60% of drivers that partner with Uber in Honolulu drive less than seven hours per week. They drive to augment existing incomes, and because many of them already have full time jobs, they tend to drive hours outside of a typical 9-5 workday. These drivers are absolutely critical to Honolulu, because many of them are the ones driving at 2am on a Friday or Saturday night when transportation options are scarce and impaired driving is most prevalent. According to the US Center for Disease Control, Hawaii has the highest rate of self-reported drunk driving in the country. After Uber launched in Honolulu, DUI rates began to decrease year over year, despite an increase in population size. These drivers who drive less than seven hours per week are largely to thank for that.

When someone plans to drive only a few hours a week and maybe only for a month or two between jobs, they're not going to wait around for months for the city to certify them. You may think that we wouldn't want drivers who aren't committed enough to stick around for months while their paperwork processes with the city, but you'd be overlooking the fact that driving with Uber is not a career for most people, and we know that.

We know that when you put up barriers to entry in the form of excessive regulations (regulations that duplicate the process already performed by the TNC), the drivers who drive a few hours a week, or drive only late nights, will no longer drive. If you make it too onerous and time-consuming for drivers to become certified with the city in addition to the TNC, there will not be enough drivers to meet demand. You're would lose quality drivers who could pass a thorough screening process to offer a great experience for riders, reduce drunk driving rates in Honolulu, and help reduce congestion -- all because the regulatory framework is outdated and does not make sense for today's rapidly evolving transportation options.

Regulating the TNC instead of individual drivers would be a new approach for the City & County of Honolulu, but it is a proven model. Taking a new approach requires a big shift in mindset, and we understand that. But, just because something has always been done one way in the past, does not mean it is the way things should be done forever. This old approach does not make sense when applied to new transportation alternatives that already perform screenings as a part of their business model. One of the prime reasons Uber riders say they choose Uber is because they value our approach to safety – an approach that happens before, during, and after each ride.

When a TNC driver accepts a rider's request in the app, the rider will see the driver's first name, photo, and license plate number. The TNC driver can see the rider's first name and rating. The driver and rider can contact each other through the app (without ever exchanging personal phone numbers) if needed. At the end of the trip, the rider and driver can both provide feedback about the trip and that information will be stored by Uber. Past trip history information including the route taken and the amount paid or received are both accessible by the rider and driver at any time through the app and through the emailed trip receipt.

Taxi companies in Honolulu rely on the city to screen their drivers. Taxi rides can be pre-arranged, but oftentimes they're street hails, and so that city-issued taxi certificate or permit number is what riders are supposed to use to identify who they're riding with. What happens though if something goes wrong? It can be difficult to see or remember a certificate number, especially in a moment of a crisis. How do you report back to the taxi company, city, or law enforcement when you have an issue if there's no available record of your trip and you don't know the certificate number or driver's name?

Insert technology.

Technology in the Uber app replaces the need for individual driver certificates. To use Uber as a rider, you must have a smartphone, an account with Uber, and request a ride through the app. There are no street hails, so there is no anonymity for either the rider or driver. There is no need for a city-issued certificate on the dashboard because all of that information and more is available in the app and available to both parties at any time. The things the city does on behalf of taxi companies, Uber does itself. The city ought to require these safety precautions of all TNCs, including Uber, and such requirements are standard across the country.

Have an issue with your ride? No need to remember anything about your driver or his vehicle, because everything is recorded within the app. In case of an emergency, Uber has an Incident Response Team available 24/7 to assist law enforcement. We're a private company and people wouldn't use Uber if they didn't value it as a safe, reliable, and affordable transportation option as they have many other options. Uber's business model and technology eliminates the need for city-issued certificates to drivers, and instead allows the city to regulate the TNC.

Because the need for city-issued certificates is obsolete due to technology, rather than maintain a central database of TNC drivers, we would recommend the city consider audit options to ensure compliance. In some municipalities with TNC regulations, the city may review a representative sample of TNC company records for the purposes of ensuring compliance. These provisions vary, and can be customized to fit the needs of Honolulu County.

We would like to work with this committee to help shape the future of regulations with an approach that keeps safety at the forefront, and ensures Honolulu can remain innovative and competitive.

Thank you for allowing me to provide testimony on Bill 36. We appreciate the efforts made by the Council to ensure TNCs have a home in Honolulu County, and we look forward to continuing this conversation. Please find below, proposed TNC regulations for Honolulu. Attached is a regulatory framework that has been customized for Honolulu, but resembles the TNC framework adopted by more than 31 states and several municipalities across the country.

CHAPTER 12A REGULATIONS OF TRANSPORTATION NETWORK COMPANIES

BE IT ORDAINED by the People of the City and County of Honolulu:

The purpose of this Chapter is to ensure the safety, reliability and cost-effectiveness of rides provided by Transportation Network Company Drivers within the City and County of Honolulu and to preserve and enhance access to these important transportation options for residents and visitors.

The Revised Ordinances of Honolulu 1990, is amended by adding a new Chapter 12A to read as follows:

SECTION 1. DEFINITIONS. As used in this Chapter: "*Personal Vehicle*" means a vehicle that is used by a Transportation Network Company Driver and is: (a) Owned, leased or otherwise authorized for use by the Transportation Network Company Driver; and (b) Not a taxicab, limousine, or vehicle for hire.

"*Digital Network*" means any online-enabled technology application service, website or system offered or utilized by a Transportation Network Company that enables the prearrangement of rides with Transportation Network Company Drivers.

"*Transportation Network Company*" or "*TNC*" means a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this Chapter and operating in the City and County of Honolulu that uses a Digital Network to connect Transportation Network Company Riders to Transportation Network Company Drivers who provide Prearranged Rides. A Transportation Network Company shall not be deemed to control, direct or manage the Personal Vehicles or Transportation Network Company Drivers that connect to its Digital Network, except where agreed to by written contract.

"*Transportation Network Company Driver*" or "*TNC Driver*" means an individual who: (a) Receives connections to potential passengers and related services from a Transportation Network Company in exchange for payment of a fee to the Transportation Network Company; and (b) Uses a Personal Vehicle to offer or provide a Prearranged Ride to riders upon connection through a Digital Network controlled by a Transportation Network Company in return for compensation.

"*Transportation Network Company Rider*" or "*rider*" means an individual or persons who use a Transportation Network Company's Digital Network to connect with a Transportation Network Company Driver who provides Prearranged Rides to the rider in the TNC Driver's Personal Vehicle between points chosen by the rider.

"*Prearranged Ride*" means the provision of transportation by a TNC Driver to a rider, beginning when a TNC Driver accepts a ride requested by a rider through a Digital Network controlled by a Transportation Network Company, continuing while the TNC Driver transports a requesting rider, and ending when the last requesting rider departs from the Personal Vehicle. A

Prearranged Ride does not include transportation provided using a taxicab, limousine, or other vehicle for hire. A prearranged ride does not include a shared expense carpool or vanpool arrangement or service, or any other type of arrangement or service in which the driver receives a fee that does not exceed the driver's costs associated with providing the ride.

SECTION 2. NOT OTHER CARRIERS. TNCs or TNC Drivers are not common carriers, contract carriers or motor carriers, nor do they provide taxicab or vehicle for hire service.

SECTION 3. TNC PERMIT REQUIRED. (a) A person shall not operate a TNC in the City and County of Honolulu without first having obtained a permit from the Department of Customer Services ("Department"); provided that, any TNC operating in the City and County of Honolulu before the effective date of this Chapter may continue operating until the Department creates a permit process and sets a registration deadline.

In addition,

(a) TNC Driver shall not be required to register the vehicle such TNC Driver uses to provide prearranged rides as a commercial or for-hire vehicle.

(b) The Department shall issue a permit to each applicant that meets the requirements for a TNC set forth in this Chapter, and pays an annual permit fee of \$1,000 to the Department.

SECTION 4. AGENT. The TNC must maintain an agent for service of process in the City and County of Honolulu.

SECTION 5. FARE COLLECTED FOR SERVICES. On behalf of a TNC Driver, a TNC may charge a fare for the services provided to riders; provided that, if a fare is collected from a rider, the TNC shall disclose to the rider the fare or fare calculation method on its website or within the software application service. The TNC shall also provide riders with the applicable rates being charged and the option to receive an estimated fare before the rider enters the TNC Driver's vehicle.

SECTION 6. IDENTIFICATION OF TNC VEHICLES AND DRIVERS. The TNC's software application or website shall display a picture of the TNC Driver, and the license plate number of the motor vehicle utilized for providing the prearranged ride before the rider enters the TNC Driver's vehicle.

TNC Drivers shall display City approved vehicle trade dress, consisting of recognizable TNC emblems, which will allow the City to identify TNC Vehicles at a reasonable distance at all times when such vehicles are active on Operator's TNC Software Application network. Such trade dress, which may be removable, shall be a visual indicator that indicates the driver is affiliated with a specific TNC.

SECTION 7. ELECTRONIC RECEIPT. Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the rider on behalf of the TNC

Driver that lists: (a) The origin and destination of the trip; (b) The total time and distance of the trip;; and (c) An itemization of the total fare paid, if any.

SECTION 8. LIMITATION ON TNCs. TNC Drivers shall be independent contractors and not employees of the TNC if all of the following conditions are met: (a) The TNC does not prescribe specific hours during which a TNC Driver must be logged into the TNC's digital platform;

(b) The TNC imposes no restrictions on the TNC Driver's ability to utilize digital platforms from other TNCs; (c) The TNC does not assign a TNC Driver a particular territory in which to operate; (d) The TNC does not restrict a TNC Driver from engaging in any other occupation or business; and

(e) The TNC and TNC Driver agree in writing that the TNC Driver is an independent contractor of the TNC.

SECTION 9. TNC DRIVER REQUIREMENTS. (a) Before allowing an individual to accept trip requests through a TNC's digital platform:

(1) The individual shall submit an application to the TNC, which includes information regarding his or her address, age, driver's license, motor vehicle registration, automobile liability insurance, and other information required by the TNC; (2) The TNC shall conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include review of:

(A) multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and (B) U.S. Department of Justice National Sex Offender Public Website; (3) The TNC shall obtain and review, or have a third party obtain and review, a driving history research report for such individual.

(b) The TNC shall not permit an individual to act as a TNC Driver on its digital platform who: (1) Has had more than three moving violations in the prior three-year period, or one of the following major violations in the prior three-year period:

- . (A) Attempting to evade the police,
 - . (B) Reckless driving, or
 - . (C) Driving on a suspended or revoked license;
- (2) Has been convicted, within the past seven years, of

- . (A) Any felony;
- . (B) Misdemeanor driving under the influence, reckless driving, hit and run, or any other driving-related offense or any misdemeanor violent offense or sexual offense;

- . (3) Is a match in the U.S. Department of Justice National Sex Offender Public Website;
- . (4) Does not possess a valid driver's license from any U.S. state;

(5) Does not possess proof of registration for the motor vehicle(s) used to provide prearranged rides; (6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide prearranged rides; or (7) Is not at least 19 years of age.

SECTION 10. NO CASH TRIPS. The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments for the fares charged to riders for prearranged rides and notify TNC Drivers of such policy.

SECTION 11. NO DISCRIMINATION; ACCESSIBILITY.

(a) The TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to riders and potential riders and notify TNC Drivers of such policy.

(b) TNC Drivers shall comply with all applicable laws regarding non-discrimination against riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.

(c) TNC Drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

SECTION 12. RECORDS. A TNC shall maintain the following records: (a) individual trip records for at least one (1) year from the date each trip was provided; and (b) individual records of TNC Drivers at least until the one year anniversary of the date on which a TNC Driver's relationship with the TNC has ended.

SECTION 13. AUDIT PROCEDURES; CONFIDENTIALITY OF RECORDS.

(a) For the sole purpose of verifying that a TNC is in compliance with the requirements of this Chapter and no more than annually, the Department of Customer Services ("Department") shall have the right to visually inspect a sample of records that the TNC is required to maintain. The sample shall be chosen randomly by the Department in a manner agreeable to both parties. The audit shall take place at a mutually agreed location in the City and County of Honolulu. Any record furnished to the Department may exclude information that would tend to identify specific drivers or riders.

(b) In response to a specific complaint against any TNC Driver or TNC, the Department is authorized to inspect records held by the TNC that are necessary to investigate and resolve the complaint. The TNC and agency shall endeavor to have the inspection take place at a mutually agreed location in the City and County of Honolulu. Any record furnished to the Department may

exclude information that would tend to identify specific drivers or riders, unless the identity of a driver or rider is relevant to the complaint.

(c) Any records inspected by the Department under this Chapter are designated confidential, are not subject to disclosure to a third party by the Department without prior written consent of the transportation network company, and are exempt from disclosure under the Hawaii Uniform Information Practices Act ("UIPA"). Nothing in this Section shall be construed as limiting the applicability of any other exemptions under the UIPA.